Guidelines on the revised Audiovisual Media Services Directive – Questions and Answers
Brussels, 2 July 2020

Why is the Commission issuing guidelines on the Audiovisual Media Services Directive?

Under the revised Audiovisual Media Services Directive (AVMSD), the Commission, after consulting relevant representatives of the EU Member States (so-called Contact Committee), has to adopt guidelines on the definition of video-sharing platform services and on obligations to promote European works.

The revised AVMSD extends certain audiovisual rules to video-sharing platforms, including certain 'hybrid' services such as social media, where the provision of videos and programmes is not the principal purpose of the service, but still constitutes an 'essential functionality' thereof. The guidelines clarify which services will be covered by the new rules under this criterion.

The new rules also strengthen cultural diversity, notably by introducing obligations for video on-demand services to ensure at least a 30% share of European content in their catalogues and to give prominence to such content. They also allow, under certain conditions, Member States to impose on media service providers that are established in other Member States, obligations to contribute financially to the production of European works. The new obligations do not apply to media service providers with a low turnover or a low audience in order not to undermine market development and inhibit the entry of new market players.

In this context, the guidelines also aim to help clarifying:

a. the calculation of the share of European works in the catalogues of on-demand providers and
b. the definition of low audience and low turnover in the context of the afore-mentioned exemptions.

What are the goals the guidelines?

These guidelines aim to foster a coherent implementation of the new AVMSD rules across the EU, concerning video-sharing platforms and European works. Member States now have a useful toolkit for the assessment and the practical application of the essential functionality criterion of the video-sharing platform definition as well as for the calculation of the share of European works in video-on-demand catalogues and the definition of low audience and low turnover.

Are the guidelines legally binding?

The guidelines are not binding and Member States are free to use alternative approaches that are compatible with Union law. The guidelines, however, reflect the Commission’s view on these matters and the Commission will refer to the guidelines when assessing national AVMSD implementation.

Who has the Commission consulted before issuing the guidelines?

The Commission has consulted the Contact Committee, composed of representatives of the Member States, as required by the AVMSD. Moreover, the Commission ran a targeted stakeholder consultation on its website from 21 February until 15 March 2020, to gather input on specific technical aspects.

What is the role of European Regulators Group for Audiovisual Media Services in the context of the guidelines?

The European Regulators Group for Audiovisual Media Services (ERGA) brings together national independent regulatory bodies in the field of audiovisual services, to advise the Commission on the implementation of the AVMSD. The revised AVMSD strengthens the role of ERGA by giving it a legislative status and new specific tasks.
Both guidelines issued today encourage national authorities to exchange information, data and best practices within ERGA and to discuss potential issues and challenges that are related to the application of the guidelines. ERGA should bring significant issues in the approaches taken by national regulatory authorities to the attention of the Commission. The Commission will keep the AVMSD Contact Committee informed about relevant information received from ERGA.

**What criteria will be used to determine whether one particular platform is a video-sharing platform?**

The guidelines on video-sharing platforms provide a list of relevant indicators, divided into four categories, that Member States can use in their assessment of the essential character of the audiovisual functionality of any platform. The guidelines suggest, for example, indicators relating to the non-ancillary (stand-alone) character of the audiovisual content, its qualitative and quantitative importance, the monetisation of audiovisual content and the availability of tools aimed at enhancing its visibility or attractiveness.

The guidelines equip national authorities with a flexible set of indicators to be applied on a case-by-case basis for concluding if the provision of audiovisual content constitutes an essential functionality of a platform and the latter should thus be subject to the new video-sharing platform rules.

**Will social media be considered as video-sharing platforms?**

The revised AVMSD applies to video-sharing platforms, in view of protecting the audience from illegal and harmful content online. The Directive states explicitly that certain social media services should also be covered if the provision of programmes and user-generated videos constitutes an essential functionality of these services.

While the assessment of the essential functionality in specific cases remains the prerogative of national authorities, the guidelines support, in line with the letter and the spirit of the new rules, the application of the video-sharing platform rules to social media services.

**Does the establishment of the essential functionality require national authorities to demonstrate that the platform hosts a certain quantity of audiovisual content?**

The fact that a platform offers a substantial amount of audiovisual content can be an indication that such audiovisual content is a major part of the service. However, this is only one of the possible indicators to consider, together with several others, and not an essential condition for the audiovisual functionality to be considered essential.

The guidelines also recognise that it may often be difficult for national authorities to obtain reliable figures and quantitative data because such data is often not available or only available to the platforms. For this reason, it recognises that national authorities may consider exclusively or predominantly qualitative indicators to determine the essential functionality.

**How will the 30% share of European works be calculated?**

The guidelines on European works recommend a method of calculation based on the number of titles in the catalogue. The Commission considers that, in the case of video-on-demand services, due to their characteristics, it is indeed more appropriate to calculate the share of European works in catalogues based on titles and not on transmission (viewing) time. The calculation based on titles is also more likely to facilitate the creation of a more diversified offer of European works, to be less burdensome for video-on-demand providers than the calculation by duration, and to facilitate monitoring and supervision by the relevant national authorities.

**What constitutes a title?**

In the case of feature and TV films, every film constitutes a title in a catalogue. Different films in a franchise should also be understood as constituting different titles in a catalogue. The identification of what constitutes a title is more complex for television series or other formats presented in a serialised manner (i.e. episode by episode). The guidelines recommend that one season of a series should, in principle, count as one title.

In order to ensure proportionality and effectiveness, the guidelines specifically allow Member States to introduce weighting mechanisms, for example by attributing a higher value in the calculation of the share to titles that have clearly higher production costs compared to other items in the catalogue.

**What about providers that have multiple national catalogues with different titles?**

Each national catalogue offered by multi-country video-on-demand providers should have 30% of European works.
Who will be exempted from the obligations to promote European works?

Under the revised AVMSD, the obligations to promote European works do not apply to media service providers with a low turnover or a low audience.

The guidelines do not intend to overregulate and put additional administrative burdens on microenterprises. Therefore, they recommend exempting all microenterprises from the European work obligations. The guidelines also suggest a specific methodology for calculating audience for video-on-demand services and specific thresholds for the low audience exemption for both linear and on-demand services.

In order to take into account of the different sizes of audiovisual markets, especially in smaller Member States, and of national and sectoral specificities, the guidelines provide for the possibility to introduce lower thresholds under specific conditions.

What are the next steps?

Member States have to transpose the revised AVMSD Directive, including the new rules on video-sharing platforms and European works, by 19 September 2020. From that date, the Commission will monitor Member States' progress on the transposition and implementation of the Directive to ensure compliance with the new rules.

For more information

Press release - Commission takes further steps to promote European audiovisual works and protect vulnerable viewers

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